

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP540-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2011CF5046

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KENNETH ANTHONY WRIGHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: STEPHANIE ROTHSTEIN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Kenneth Anthony Wright appeals a judgment convicting him after a guilty plea of possession of cocaine with intent to deliver, as a second or subsequent offense. Wright argues that the police violated his Fourth Amendment rights during a traffic stop because they acted outside the scope of the traffic stop when they asked for permission to search him. He also

contends that the police went beyond the scope of his consent when they searched him. We affirm.

¶2 At the suppression hearing, Police Officer Michael Slomczewski testified that he and Officer Dustin Frank were patrolling a high crime area in the early evening when they stopped Wright because the car he was driving did not have a front license plate. Officer Slomczewski testified at the suppression hearing:

As I was walking up ... he had his hands on the steering wheel. I said I am Officer Smoczewski. As I walked up, he dropped his hands from the steering wheel and put them in his lap area. I thought he might be trying to conceal or retrieve a weapon. I said, "Put your hands back on the steering wheel." He complied. And then I explained to him, "You have no front plate on your vehicle." I sa[id], "Is this your car?" He sa[id], "No, it's not my car. The plate's in the back seat." At that point, I asked him to step out of the vehicle, which he did. I asked him if he had any contraband on his person. He said "No." I asked him if he would consent to a search of his person. He said he would.

¶3 While searching Wright, Officer Slomczewski discovered drugs wrapped in tissue about the size of a golf ball in Wright's groin area. On cross-examination, Officer Slomczewski testified that the reason he asked Wright if he could search him is because Wright had dropped his hands from the steering wheel when he approached. Officer Slomczewski explained that, based on his ten years of experience as a police officer, people often drop their hands in order to conceal contraband. Concluding that the stop was proper and Wright consented to the search, the circuit court denied the motion to suppress.

¶4 The touchstone of Fourth Amendment analysis is "reasonableness, which is measured in objective terms by examining the totality of the circumstances." *State v. Gaulrapp*, 207 Wis. 2d 600, 607, 558 N.W.2d 696, 699

(Ct. App. 1996). When the police temporarily detain a person during a traffic stop, they are “seizing” the person within the meaning of the Fourth Amendment, even if they detain the person “only for a brief period and for a limited purpose.” *Id.*, 207 Wis. 2d at 605, 558 N.W.2d at 698. A search or seizure is reasonable under the Fourth Amendment if the scope of the search or seizure is reasonably related to the initial justification for the governmental intrusion. *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). Generally speaking, the Fourth Amendment prohibits the police from searching or seizing citizens without a warrant, with certain well established exceptions, including searches conducted after a person has freely consented. See *State v. Luebeck*, 2006 WI App 87, ¶7, 292 Wis. 2d 748, 754–755, 715 N.W.2d 639, 642. If a person freely and voluntarily consents to a search, the search is valid without a warrant “unless that consent is given while an individual is illegally seized.” *Id.*, 2006 WI App, ¶7, 292 Wis. 2d at 755, 715 N.W.2d at 642.

¶5 Wright contends that the police acted unreasonably under the Fourth Amendment when they asked for permission to search him because that request exceeded the scope of the initial justification for their stop, which was to investigate the missing front license plate. In *Luebeck*, we held that the police impermissibly extended the scope of the traffic stop, thus invalidating the driver’s consent to a search. *Id.*, 2006 WI App 87, ¶¶15–17, 292 Wis. 2d at 761, 715 N.W.2d at 645. In that case, the officer conducted a field sobriety test, which showed that Luebeck was not intoxicated, and told Luebeck that he was being released with a warning for a lane violation. *Id.*, 2006 WI App 87, ¶3, 292 Wis. 2d at 753, 715 N.W.2d at 641. After informing Luebeck that he would be released with a warning, the officer *then* decided to ask Luebeck for permission to search. *Ibid.*

¶6 Unlike the situation in *Luebeck*, the police in this case had not yet completed their investigation of the license plate violation before asking Wright for consent to search. To the contrary, Officer Slomczewski testified that he asked Wright to step out of the car and asked for permission to search him *during* his investigation because Officer Slomczewski was concerned for his safety due to the fact that Wright had dropped his hands from the steering wheel as he approached. The police did not impermissibly extend the scope of the traffic stop by asking Wright's permission to search; they asked Wright's permission to search *as they were investigating* in order to ensure their safety, and Wright freely gave them permission to search. The search was therefore reasonable under the Fourth Amendment based on Wright's consent.

¶7 Wright next argues that Officer Slomczewski's search exceeded the scope of his consent. Officer Slomczewski testified that he asked Wright: "You mind if I search real quick?" Wright contends that when he responded that he did not mind, he did not realize that the officer would conduct a search thorough enough to discover a golf-ball sized object in his groin area. Wright forfeited his right to raise this issue on appeal by failing to argue in the circuit court that the search exceeded the scope of his consent. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501, 505 (1997) (citation omitted). Therefore, we do not consider it.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

